

HUMAN SERVICES BOARD

In re) Fair Hearing No. N-08/09-482
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 Appeal of)

The petitioner appeals the decision by the Department for Children and Families, Economic Services Division, Health Access Eligibility Unit (HAEU) that he and his wife are no longer eligible for Catamount Health Assistance Program (CHAP) benefits. The issue is whether the petitioner's income from self-employment exceeds the maximum allowable under that program.

1. The petitioner lives with his wife and is self employed. They also have rental income. They report their income to the Department based on their annual federal tax returns. In a decision dated August 3, 2009, the Department notified the petitioner that his and his wife's eligibility for CHAP premium assistance benefits would close effective September 1, 2009 due to excess income, as determined from the petitioner's 2008 tax returns.

2. A dispute in this matter concerns the treatment under the regulations of "depreciation" as reported on the petitioner's tax return. At the hearing in the matter, held by phone on September 9, 2009, the petitioner's wife did not contest the Department's determination that the household's 2008 net income from all sources, divided by twelve months, but without any deduction for depreciation, was \$4,283.42, which is over the CHAP maximum of \$3,658 (or 300% of Federal Poverty Level [FPL]) for a family of two. It appears that if the amount claimed by the petitioners as a deduction for depreciation on their tax return was allowed, their income would be below the maximum.

3. At the hearing the petitioner's wife also alleged that their income had decreased during the first eight months of 2009. She was advised that they should reapply for CHAP based on this change in circumstances.

ORDER

The Department's decision is affirmed.

REASONS

Income eligibility for CHAP is determined based on all earned and unearned income in the household, and must be below 300% FPL. W.A.M. \$ 5913. Only defined "business

expenses" are deducted from gross income from self employment. W.A.M. §§ 5320 & 5916. Under § 5321D, those expenses are "limited to operating costs necessary to produce cash receipts". That section further specifies that: "Items such as. . .depreciation. . .are not allowable business expenses".

Inasmuch as there is no dispute that the Department correctly determined the petitioner's income, and that its decision was in accord with the above regulations, the Board is bound to affirm that decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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